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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 999

PRESSED STEEL CAR COMPANY, INC., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The Tax Court entered memorandum findings of fact and opinion (R. 255a–282a) which are not reported. The opinion of the Circuit Court of Appeals affirming the decision of the Tax Court *per curiam* (R. 284) is reported at 152 F. 2d 280.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 26, 1945. (R. 285–286.) The petition for a writ of certiorari was filed March 26, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Tax Court erred in determining the basis for depreciation of assets acquired by the taxpayer in exchange for its securities.

STATUTE INVOLVED

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * *

(l) *Depreciation.*—A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. * * *

SEC. 113. ADJUSTED BASIS FOR DETERMINING GAIN OR LOSS.

(a) *Basis (Unadjusted) of Property.*—The basis of property shall be the cost of such property; except * * *

(b) *Adjusted Basis.*—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided.

* * * * *

SEC. 114. BASIS FOR DEPRECIATION AND DEPLETION.

(a) *Basis for Depreciation.*—The basis upon which exhaustion, wear and tear, and

obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 113 (b) for the purpose of determining the gain upon the sale or other disposition of such property.

* * * * *

STATEMENT

The taxpayer was incorporated on July 24, 1936 (R. 256a), pursuant to a plan of reorganization of Pressed Steel Car Company of New Jersey in proceedings under the provisions of Section 77 B of the Bankruptcy Act. (R. 73a, 78a, 121a–122a). The plan (R. 73a–108a) and the order of the District Court confirming the plan (R. 109a–141a) provided in detail the successive steps and the securities required for its consummation. The order directed the old company and the trustees appointed in the bankruptcy proceedings to transfer to the taxpayer all of the properties and assets of the old company and directed that the taxpayer issue and deliver to the trustees the new securities in accordance with the terms and provisions of the plan. (R. 258a–259a.)

The plan of reorganization contemplated the acquisition of from $1,750,000 to $2,150,000 of new money to be used for working capital and other purposes. The stockholders were given the opportunity to furnish all or a part of the new money. If they should fail to do so, the General American Transportation Company had agreed to take not less than 350,000 shares of the first pre-

ferred stock of the new company at $5 per share. (R. 258a.) This agreement was embodied in the plan, together with the provision that as compensation for so undertaking to finance the reorganization of the company to the extent of at least $1,750,000, General American and its associates were entitled to receive 30,000 shares of the common stock of the new company, the taxpayer. (R. 82a–83a, 103a, 107a.)

On July 29, 1936, pursuant to the confirmation order, the taxpayer issued and delivered its debentures, second preferred stock, and common stock in temporary certificate form to the trustees, and they in turn transferred all of the assets, except $750,000 in cash, to the taxpayer. (R. 263a.) General American paid $1,750,000 to the trustees, and on October 14, 1936, the taxpayer issued and delivered to General American 350,000 shares of first preferred stock. (R. 264a–265a.)

The securities delivered by the taxpayer to the trustees, General American, and security holders on July 29, 1936, pursuant to the plan, were valued by the Commissioner at $6,985,130.20. The Tax Court found that such value was the cost basis of property acquired by the taxpayer, which issued its stock therefor,[1] and that in that

[1] The Tax Court held, contrary to the Commissioner's contention, that this exchange was not a tax-free reorganization, and therefore that the basis of the assets acquired by the taxpayer must be determined from this exchange. (R. 271a–281a.)

cost the Commissioner did not include the 30,000 shares of new common stock delivered by the taxpayer to the trustees who transferred them to General American. (R. 271a.) Of the sum of $6,985,130.20, the Commissioner allocated $4,195,286.54 to depreciable assets and land, and $2,788,840.66 to other assets. (R. 271a.) The method of allocation is not contested. (R. 50a–51a, Pet. 6.) The depreciable assets transferred to the taxpayer by the predecessor company on July 29, 1936, consisted of buildings, equipment and machinery, office furniture, patterns, templates and dies, which were set up on its books at certain values. (R. 271a–272a.)

The taxpayer recorded the depreciable assets and land so acquired on its books as follows (R. 272a):

Land:	
McKees Rocks	$340,742.75
Allegheny	163,537.01
Buildings:	
McKees Rocks	1,166,562.12
Allegheny	20,698.29
Machinery:	
McKees Rocks	2,204,124.36
Allegheny	20,698.29
Furniture	57,709.81
Drawings	102,828.76
Patterns	41,131.51
Templates	12,339.45
Dies	174,955.33
Improvements on Leased Property:	
Buildings	305,125.87
Machinery & equipment	114,342.29
	$4,784,795.84

In its tax return for the year 1936 the taxpayer deducted $136,714.56 as depreciation. In the notice of deficiency the Commissioner allowed a deduction of $132,727.85 (R. 272a.) By amended petition for redetermination in the Tax Court, the taxpayer claimed an increased deduction for depreciation in the amount of $285,377.13 (R. 6a, 275a) based upon an alleged fair market value of the transferred assets of $12,500,000 (R. 276a). The Tax Court sustained the allowance for depreciation on the basis of the original notice of deficiency. (R. 276a–277a.)

ARGUMENT

Contrary to the taxpayer's assertion (Pet. 5–7, 8, Br. 13, 18, 20) the Tax Court did not misapprehend the issue before it in determining the basis for depreciation of the depreciable assets acquired by the taxpayer from its predecessor. As the taxpayer states (Pet. 6, 8, Br. 15–18) their basis for depreciation, disregarding provisions for adjustments not here relevant, is their cost. Revenue Act of 1936, Sec. 114 (a), *supra*. The Tax Court found that the securities which were delivered over on July 29, 1936, by the taxpayer pursuant to the plan of reorganization were valued by the Commissioner at $6,985,130.20, and "Such value was the cost basis of property acquired to the petitioner, which issued its stock therefor, * * *" (R. 271a.) This finding hardly leaves room for the taxpayer's assertion

that the Tax Court mistook the question to be the fair market value of the assets received by the taxpayer (Pet. 6–7, Br. 18–19), and the stipulation of facts (R. 49a–51a) left no room for any question as to the issues between the parties.[2] Nor is that assertion in any way strengthened because the Commissioner and the courts below excluded, in computing the cost to the taxpayer of its assets, 30,000 shares of stock issued by the taxpayer for delivery to General American. (Pet. 8–9, Br. 12, 15–16.) As the Tax Court found, these were excluded from cost (R. 271a), because they represented, not the cost of assets acquired by the taxpayer, but value paid by the taxpayer for the expenses of its organization. (R. 276a.)

The taxpayer does not claim that the expenses of its organization should go to increase the cost or depreciation basis of its assets, nor do the cases cited by the taxpayer so hold. (Br. 14–18.) Those cases hold only that where securities or property are in fact exchanged for assets, the cost of the assets is the fair market value of the property given up in exchange. The substance of the petition is that the Tax Court should have treated the

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[2] The value of the assets, however, was relevant in determining the value of the stock and the petitioner contended that the value of the assets was at least $12,500,000, the value which it placed on the securities. The excerpt from the opinion quoted in the petition (pp. 6–7) is to be interpreted in the light of this contention which the Tax Court was answering.

30,000 shares as part of the cost of the assets, rather than a cost of organization, and should have found a different value for the securities which the taxpayer issued. (Br. 18–20.) But the classification of the payment in shares and the determination of value are questions of fact. Cf. *John Kelley Co.* v. *Commissioner,* decided by the Court January 7, 1946, not yet reported; *Elmhurst Cemetery Co.* v. *Commissioner,* 300 U. S. 37. The treatment of the shares as payment of an organization expense is amply warranted by the plan of reorganization and the order confirming the plan (R. 82a–83a, 107a, 121a, 133a), for the 30,000 shares were compensation to General American and its associates for "undertaking to finance the reorganization of the Company to the extent of at least $1,750,000 * * *" which sum was to provide new money for working capital (R. 82a). The depreciation allowed by the Commissioner and affirmed by the Tax Court is substantially in line with the depreciation claimed on the taxpayer's returns, and the valuations used are substantially in line with those ascribed to the taxpayer's shares on its books. (R. 272a, 276a.) For reasons made clear in its opinion the Tax Court found the valuation evidence adduced by the taxpayer to be unpersuasive. (R. 276a–277a.) The Circuit Court of Appeals affirmed the Tax Court's decision *per curiam* (R. 284), obviously because the questions

presented by the taxpayer's appeal were beyond the scope of appellate determination. *Dobson* v. *Commissioner,* 320 U. S. 489.

CONCLUSION

The petition presents no substantial question and should be denied.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

SEWALL KEY,
Acting Assistant Attorney General.

HELEN R. CARLOSS,
WILLIAM ROBERT KOERNER,
Special Assistants to the Attorney General.

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